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The Solicitors' Journal

[ESTABLISHED 1857.] [REGISTERED AS A NEWSPAPER.]

VOL. LXXVIII. No. 43 [PAGES 757 TO 772]. Saturday, October 27, 1934. PUBLISHED WEEKLY. PRICE ONE SHILLING.

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The Solicitors' Journal

VOL. LXXVIII. **Saturday, October 27, 1934.** No. 43

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Current Topics.

An Unwanted Section.

By the promotion of Mr. Justice Roche to the Court of Appeal, and the resignation of Mr. Justice Acton, the number of puisne judges in the King's Bench Division has been reduced to fifteen—a quite inadequate number to grapple with the mass of litigation now before the courts; but in view of the provisions of s. 11 of the Judicature Act, 1925, nothing can be done to fill the vacancies created in the list of King's Bench judges unless and until an address is presented to His Majesty from both Houses of Parliament representing that the state of business in that Division requires that the vacancies should be filled. Doubtless, when Parliament re-assembles, steps will be taken to have such an address presented to His Majesty, but why, it may be asked, should this cumbersome and slow-footed procedure be necessary for the appointment of judges imperatively required for the expeditious despatch of business? Some relief, we are aware, is afforded, so far as circuit work is concerned, by the appointment of Commissioners of Assize—two have recently been appointed and will doubtless discharge the duties falling to them with ability and despatch; but Commissioners of Assize, great lawyers though they may be, are never regarded in the assize towns as compensating for the absence of the "red" judges and the pomp and circumstance attending them. If Commissioners were empowered to deal with work in London—a proposition which we do not favour—there might be some excuse for not appointing additional judges, but as this jurisdiction is not conferred upon them, the pressure on the King's Bench judges sitting in London becomes increasingly greater. Is not the sensible thing to be done to repeal s. 11 of the Act of 1925, and thus leave the Lord Chancellor free to appoint additional judges when he sees the need for them is urgent? He may surely be trusted to exercise the power wisely, and only when the necessity for doing so is obvious.

Civil Service Pensions: Proposed Legislation.

It is intimated that the committee of the National Whitley Council of the Civil Service, which was set up to consider the recommendations of the Royal Commission, presided over by Lord Tomlin, concerning superannuation, have now agreed on their report, and that a Bill will shortly be introduced in Parliament to carry the proposals into effect. The provisions of the new Act are to apply to all persons appointed after its passing and, with the exception of the relatively small number of persons subject to the Act of 1859; those, if under sixty at the date of the new Act, are to have the option of being dealt with under the new averaging arrangements or of remaining under the existing provisions. The following are some of the new proposals. In some circumstances free residence or quarters or allowances are to be brought within emoluments reckonable for superannuation benefits as are also acting allowances for all awards made after the date of the new Act. Benefits are also to be based on the actual average of pensionable emoluments received during the last three years of service instead of, in general, on the final salary. Continuity of pension rights is to be secured in the case of Civil Servants appointed to posts under local authorities and *vice versâ*, and the conditions under which Civil Servants entering "approved employment" outside the service may retain accrued pension rights have been defined.

Preservation of Picturesque Cottages under Housing Acts.

The ruling of the Minister of Health that certain historic cottages which had been scheduled for clearance need not be demolished because of their picturesque character will be generally welcomed. The dwellings in question are four cottages at Mulbarton, near Norwich, but the principle should have wide application. It is intimated that in such cases demolition is not to be made a compulsory condition for re-housing displaced inhabitants, provided there is no question of such property being used for human habitation unless brought up to a reasonable standard. Upon such an undertaking by the local authority, the Ministry will allow the council to erect dwellings in place of the cottages and give a subsidy under the Housing Act, 1930. This disposes of a widespread impression on the part of local authorities that demolition is a condition precedent of a capital grant. The Society for the Protection of Ancient Buildings has received an intimation from the Ministry that the Exchequer grant under the Act of 1930 may in appropriate circumstances be available for the re-housing of persons displaced by the conversion of two adjoining houses into one through house. No grant is ordinarily available for the cost of reconditioning, but it is open to the owner to apply to the local authority for a grant under, and in respect of the cost of works specified in, the Housing (Rural Workers) Acts, 1926 and 1930.

Sex Disqualification Removal.

An effect of the Sex Disqualification (Removal) Act, 1919, which, by s. 1, provides that a person "shall not be disqualified by sex or marriage from the exercise of any public function, or from being appointed to or holding any civil or judicial office or post . . ." is indicated by *Re Edwards Square Garden Committee; Smith* v. *Mitchell* (78 Sol. J. 767). The maintenance and management of various garden squares

in Kensington, of which the square in question is one, was, by the Kensington Improvement Act, 1851, vested in a committee of surrounding male inhabitant householders, with power to appoint a sub-committee. CLAUSON, J., in the course of his judgment, alluded to the fact that the garden committee had statutory power to make bye-laws for the management of the square with the resultant exercise of legislative authority binding the public. This disposed of the contention that the committee did not exercise a "public function," and it was held that the aforesaid provision of the Act of 1851, to the effect that only the male sex should sit on the committee, had been repealed by the Sex Disqualification (Removal) Act, and had ceased to operate.

Safer Roads.

IN the course of an address at the annual conference at the Guildhall of the Magistrates Association, of which he is President, the Lord Chancellor (LORD SANKEY) made reference to the Road Traffic Act as one of great importance to justices, and pointed out that the penalties that were permitted by the Act must be the subject of careful consideration. The learned Lord Chancellor stressed the purpose for which the Act had been passed, and said that human nature being what it was, they were sometimes apt to allow their judgment to be swayed by overmuch sympathy for an unfortunate defendant and not be quite so mindful of the injuries that might have been afflicted upon some member of the public through the defendant's negligent or careless driving. Another aspect of the problem—the provision of roads of a design suitable for modern conditions—was touched upon by Mr. HORE BELISHA in opening a new street at Devonport recently. The Minister of Transport pointed out that there are over a thousand autonomous highway authorities in Great Britain, and his sole power resides in attaching conditions to the grants he made to them. He advocated the provision of a central reserve or line of islands to separate traffic going in different directions and of proper safeguards for the pedestrian. Proposals to widen a carriageway in such a manner as to deprive the pedestrian of his footway or verge will not be eligible for grants from the Road Fund, and his needs will be provided for on every new road built in this country. The removal of danger points should be facilitated by the plan arranged by the Home Secretary, under which every road accident alleged to be due to a road defect shall be reported by the Chief Constable of the district to the Divisional Road Engineer of the Ministry of Transport. The London and Home Counties Traffic Advisory Committee considered recently certain proposed new regulations relating to the use of pedestrian crossings, but the meetings are private and their recommendations have not been disclosed. The Minister is required to refer such matters, for advice and report, to the Committee under the London Traffic Act, 1924.

Slate Clubs.

THE recent announcement by Lord MOTTISTONE, Chairman of the National Savings Committee, that the committee had a new scheme by which it was hoped to get rid of the losses of the great share-out clubs, was good news to all who are interested financially and otherwise in the great work done by these clubs. The amount shared out by these clubs, his lordship said, was known to amount to many millions, and such was the standard of honesty in this country that the number of defalcations was surprisingly small. They had, however, been real and substantial, and the committee had completed a plan in order to guide this form of short-range thrift into safe channels. There would be little difference in the working of these clubs, but a regular standard could be set up. There should be at least two people whose signatures would be required to draw out the money. The money should be placed at once in a post office savings bank or a trustee savings bank, and there should be a treasurer as well as a secretary. If the scheme was generally adopted there would be practically no loss in working the clubs. The position under which the majority of slate clubs are practically outlawed has for a long time been extremely unsatisfactory. Companies, societies and partnerships consisting of more than twenty persons founded for the purpose of carrying on a business other than banking with the object of the acquisition of gain are void unless registered under the Companies Act, 1929 (s. 357). Since the decision in *Greenbury* v. *Cooperstein* [1926] 1 Ch. 657, a limited amount of relief has been given to members for the purpose of recovery of contributions on dissolution. In that case a mutual loan club consisting of more than twenty members was dissolved and three members on behalf of all the other members, except the defendants, who were treasurer and secretary, claimed administration of the assets, an account of the subscriptions received by the defendants from members, and of their application thereof, payment of the amount found due, and other relief. It was held that the association was illegal, but that an account could be ordered. Mr. Justice TOMLIN then said: "I do not myself believe that the law is so powerless that when money is in the hands of persons who have received it for application for an illegal purpose, it cannot protect the contributors or enable them to recover it before it has been applied for this illegal purpose . . . I am happy to think that the law is not so feeble that it cannot protect the subscribers by ordering an account." There is still, however, a mischief to be remedied, and if the National Savings Committee can completely prevent future losses it will have rendered an invaluable service to those who entrust such clubs with their savings.

Evidence of Own Age.

IN a recent case at the Westminster County Court Judge DUMAS negatived the contention that a person could not give evidence of his or her own age. In a claim for the balance of an account for the supply of goods, defendants produced their respective birth certificates to prove that they were under the age of twenty-one at the time of the transaction. His honour intimated, after looking into the cases, that, in the absence of authority, he was not going to hold that a person could not give such evidence, and he would be very much interested to find some authority to the contrary. "I hold," he said, "that as a general principle any individual is a competent witness as to his own age, and more particularly when he backs it with a certificate of birth." Leave to appeal was, however, granted provided it was lodged in twenty-one days.

Compensation in Slum Clearance.

PUBLIC attention has recently been drawn to the difficulties attendant upon the problem of providing compensation to owners of property in slum areas. While it is generally recognised that site value is the proper measure of the amount due in the case of dwellings unfit for human habitation, and that the existing standard of what is a fit house should not be lowered, it is urged that the Housing Acts do not provide adequate machinery for distinguishing between the good and bad landlord and meteing out to each what is—it is alleged—his due. There is, moreover, the case of the owner-dweller who has done everything possible to satisfy statutory requirements in the way of keeping in good order his house, which is nevertheless "unfit" owing to some defect in lay-out or architectural feature, such as low ceilings, while examples are not wanting of houses being put into repair under compulsion in areas subsequently scheduled for clearance. Objection is also taken to the provision in the Act of 1930 which enables a house to be pronounced unfit because it has bad neighbours. This is not being operated by the present Minister of Health, while the increasing use being made of clearance schemes in lieu of requiring properties in such districts to be put into repair will tend to eliminate the hardship just alluded to,

whether a landlord or owner-dweller is in question. Apart from statutory modification to meet these various difficulties, it is suggested that the local inquiries under the ægis of the Ministry of Health should be replaced by hearings before independent arbitrators. While it is clear that provision cannot be made for all hard cases in a statutory campaign against admittedly intolerable conditions, the progress towards slum clearance is not facilitated by the concomitant infliction of widespread hardship. In a statement made early in the present week, Sir HILTON YOUNG alluded to the property owner who had done nothing for his property and the owner who had done his best, but whose house remained unfit for habitation, and intimated that the case of the latter needed and was receiving consideration.

Breach of Statutory Duty to Insure.

THE judgment of Mr. Justice CHARLES in *Monk* v. *Warbey and Others* (*ante*, pp. 162, 223, 248) has now been affirmed by the Court of Appeal. It will be recalled that the short facts were that the plaintiff, while driving a motor-coach from Cobham to London, received personal injuries arising out of a collision with a car lent by Mr. WARBEY to Mr. MAY and driven by Mr. KNOWLES. Interlocutory judgment was signed against Messrs. MAY and KNOWLES on the ground of negligence, but it remained unsatisfied, as they were without means, and the action was continued against Mr. WARBEY on the ground of breach of his statutory duty to insure the car against third-party risks, under s. 35 of the Road Traffic Act, 1930. It appeared that there was a policy of insurance against third-party risks in existence, but it was insufficient to cover the insured against such risks when the car was in the possession of a borrower. A penalty is imposed under s. 35 (2) for breach of the duty to insure, and his lordship held that that did not limit the liability of persons who acted in contravention of the Act, and that the damages were not too remote. Judgment was entered against Mr. WARBEY for £70 damages and costs. Lord Justice GREER, in the Court of Appeal, said that he agreed with every word of Mr. Justice CHARLES' judgment, and that, as the Act of 1930 was passed to enable persons injured, owing to the negligence of motor car owners to recover damages, it would be poor provision for a person injured by the negligence of an uninsured person to whom a motor car has been lent by an insured person, if such injured person had no remedy under the section. His lordship said that the present case was a stronger case in favour of the plaintiff than the plaintiff's in *Groves* v. *Wimborne* [1898] 2 Q.B. 402, where it was stated by A. J. SMITH, L.J., that unless the whole purview of the Act showed that the Legislature intended the only remedy to be a proceeding for the fine, it followed that a cause of action was established on proof of a breach of statutory duty. His lordship held that the Legislature intended that the injured person should have a civil remedy, because the Act was intended for the protection of the injured person. It is, perhaps, a pity that the protection afforded to the public by ss. 35 to 40 of the 1930 Act is not more complete, even with the assistance of s. 10 of the Road Traffic Act, 1934, but the decision of the Court of Appeal is undoubtedly a step in the right direction.

Magistrate and Postman's Trial.

AT the Hampstead Police Court recently, the Chairman, Mr. J. P. R. LYELL, made some unfavourable comments upon the attitude of the authorities of the Post Office in requesting that a postman charged with stealing a postal packet valued at 1½d. in the course of transmission and £7 10s. the property of the Postmaster-General, should be committed for trial. Mr. LYELL said that he thought it was a preposterous waste of money to put the man for trial, and an unnecessary waste of time of the private witness in the case. It was not, he felt, a case in which the Post Office authorities should have exercised the right they have of forcing a case for trial.

Remuneration of Solicitor Trustees

IT has for many years been the rule in this country that a solicitor acting as a trustee can only charge for out-of-pocket expenses. The principles on which this rule is founded are laid down by Lord Cranworth, C.J., in *Broughton* v. *Broughton*, 5 D.M. & G. 160: (1) That the trustee shall not make a profit out of the trust; (2) That no one who has a duty to perform shall place himself in a situation to have his interests conflicting with that duty. There are, however, two important exceptions to this rule: (1) It was laid down in *Cradock* v. *Piper*, 1 Mac. & G. 664, that where the work is done in a suit by a solicitor, not on behalf of himself alone but on behalf of himself and his co-trustee, he can charge for same provided that the costs have not been increased by his so acting. This decision, although it has been followed, has been looked upon as anomalous and one not to be lightly extended: see *In re Corsellis* (1887), 34 Ch. D., p. 675, where the rule was held not to apply to profit costs in connection with the preparation of leases; (2) It has long been recognised that a solicitor can charge for professional services when there is a clause in the instrument creating the trust expressly authorising him to do so: see *Christopher* v. *White* (1847), 10 Beav. 524.

Ever since this decision it has been common practice for solicitors to insert a remuneration clause in the instrument creating the trust. It still, however, frequently happens that solicitors find themselves appointed trustees without such a remuneration clause, and in this article we propose considering under what circumstances a partner of such solicitor trustee can charge for professional services rendered to the trust. In *Clack* v. *Carlon*, 30 L.J. Ch. 369, where a trustee, who was a solicitor with no special charging clause, employed his partner to act personally in the trust upon the express terms that such partner should alone be entitled to the profits, it was held that such partner was entitled to his costs, Wood, V.-C., stating: "No doubt there is force in the argument that such an arrangement affords a means of collusion and duplicity. But the same remark applies with no less force to the case of a solicitor trustee who employs another solicitor. It was said that partners might make an arrangement that each should take the other's trustee business, and thus a door for fraud was opened. I confess I see no reason why such an arrangement should not be made, or why a trustee should not be able to say to this partner, '*Quoad* this transaction we are not in partnership.'" It is, however, important to remember that if such partners wish to charge for such professional services rendered to the trust, they must be careful to see that their partner who is a trustee takes no part in the work: see *In re Gates* [1933] Ch.D. 913, where a firm of solicitors made a charge for professional services rendered to a trust of which one of the partners was a trustee, alleging that it was the practice of their firm that the whole of the costs under such circumstances should go to the partners who were not connected with the trust, and it was held that as the trustee solicitor to the firm had done a large part of the work, his partners could not charge, Clauson, J., stating: "If the plaintiff had employed other members of the firm to act as his solicitors, I should have felt justified for the reasons expressed by Stirling, J. (referring to a case of a solicitor mortgagee), in allowing his partners to take the profit costs. The difficulty is that the plaintiff here did not take that course. Instead of doing so, he employed and acted by his firm, and in so acting, he, being one of the three partners in the firm, was acting as solicitor on his own behalf in transacting legal business connected with the trust, notwithstanding the fact that there were two other partners, not trustees, associated with him in the transaction."

It is further important to remember that the mere fact that the trustee is only a salaried partner at a fixed sum does not entitle the other partners to charge for work connected with the trust, so that in *Re Hill* [1934] W.N. 134, C.A.,

where a solicitor was appointed to act as a trustee without any remuneration clause, handed over the legal work connected with the trust to his partners, the terms of the partnership being that the solicitor trustee who was a senior partner should receive a fixed salary of £600 a year to act in a consultative capacity. It was held that under these circumstances the partners could not recover their costs for work done in connection with the trust, as the solicitor trustee was nevertheless interested in the profits of the firm.

From the decisions referred to there seems no reason why a solicitor trustee should not employ a partner to do the legal work connected with the trust, provided that he, the solicitor trustee, takes no actual part in the work, and it can be further shown that there is an express agreement between the partners that the solicitor trustee is to take no share of the costs. As regards the agreement itself from the decisions quoted it does not appear to be actually necessary that the same should be in writing, but, from the remarks expressed by the Court in *Re Gates, supra*, one would certainly recommend this being done where possible.

Costs.

COUNTY COURT SCALES.

Although the subject-matter of this article is, perhaps, a digression from the main theme of county court scales, yet it is desirable to touch upon the position arising where actions are brought in the High Court which could have been brought in the county court. The point is the more important in that it not infrequently arises only when the action has been tried or settled, and there is sometimes a feeling that if one had been aware of the consequences, one would have acted differently.

Section 11 of the County Courts Act, 1919, which replaces s. 116 of the County Courts Act, 1888, provides, briefly, that where an action is brought in the High Court which "could have been commenced in a county court," then, in the case of actions founded on contract, if the plaintiff recovers less than £40, he shall not be entitled to any costs of the action, whilst if he recovers more than £40, but less than £100, then he will only be entitled to costs on the county court scale. In the case of an action founded on tort, the plaintiff will be entitled to no costs at all if he is awarded less than £10, and only costs on the county court scale if he recovers more than £10, but less than £50. The section goes on to provide that where the costs are to be taxed on the county court scale, then the taxing master shall be vested with the same powers as a judge of the county court would have had, had the case been tried before him. Consequently, this has the effect of giving the taxing master discretion to award costs on a higher scale than that appropriate to the amount involved.

The court or judge of the High Court may order costs to be paid on the High Court scale or any particular county court scale if they are satisfied that there was "sufficient reason" for bringing the action in the High Court, or the defendant or one of the defendants objected to the action being transferred to the county court. In the case of an action for a debt or a liquidated demand only, the plaintiff will be entitled to such costs as may be provided by the rules of the court where he recovers a sum of £20 and upwards and obtains judgment in default or summary judgment. The costs allowed are those contained at the end of Appendix N of the Supreme Court Rules, and known as "fixed costs."

It will be observed that the rule does not apply when the claim is founded otherwise than on contract or tort, and it will not apply, even if there is a claim for a liquidated amount, if the substance of the action is something else, for example, a claim for an injunction: see *Deverell* v. *Milne* [1920] 2 Ch. 52. Moreover, there may be difficulty in determining whether the action is founded on contract or tort: see *Edwards* v. *Mallam* [1908] 1 K.B. 1003, where a question arose as to whether an action for damages in connection with the extraction of a tooth, was an action founded on contract or on tort. The distinction is of importance where the amount recovered is, say, £30. Again, the section has no application where the action is one of detinue in which the plaintiff recovers the thing claimed in specie: see *Du Pasquier* v. *Cadbury Jones and Co.* [1903] 1 K.B. 104, and this will be so whatever the value of the chattel claimed.

The wording of s. 11 should be noticed. It refers to an action which could have been brought in the county court, and it is therefore necessary to enquire into the exact limitations imposed on the jurisdiction of the county courts. Section 56 of the principal Act, as amended by the Act of 1903, provides that the county court shall have jurisdiction in respect of all personal actions where the amount of the debt or demand does not exceed £100. It will be remembered, of course, that the county court has no jurisdiction in respect of an action for libel or slander, or for seduction, or for breach of promise to marry. An action for the recovery of articles entrusted by one party to another at the time of the engagement to marry is outside the jurisdiction of the county courts: see *Parsons* v. *Burgess* [1927] W.N. 230. Nor has it jurisdiction in an action touching the title to any corporeal or incorporeal hereditament, where the annual value exceeds £100: see s. 60; or for an injunction, where the latter is the only or principal subject of the action: see *Simpson* v. *Crowle* [1921] 90 L.J. K.B. 878. Actions for ejectment may be maintained in the county court where neither the annual rent payable nor the market value of the premises exceeds £100.

Section 67 of the Act grants the county court jurisdiction in equity where the value of the estate in an administration action, or the amount of the trust funds, the amount of mortgage money, the partnership assets, etc., do not exceed £500.

The County Courts Admiralty Jurisdiction Act of 1868, as subsequently amended, provides that the county courts shall have jurisdiction in the following cases, namely: (*a*) a claim for salvage where the value of the salved property does not exceed £1,000 or the remuneration claimed does not exceed £300; (*b*) a claim for towage, necessaries or wages, where the amount claimed does not exceed £150; and (*c*) a claim for damages either to ship or cargo by collision where the amount claimed does not exceed £300.

Thus, where an action is commenced in the High Court and is subsequently settled in consideration, *inter alia*, of the payment by one party of the costs of the other, then it is wise to look carefully into the subject-matter of the action and see whether the county court scales apply or not, for a considerable saving of costs may be effected thereby.

The same applies where the matter has been referred to arbitration, and in the absence of any direction by the arbitrator as to the scale of costs, it seems that it should be affected by the same considerations as those which affect the costs of an action.

Company Law and Practice.

When can a Company Redeem Debentures?

The time at which a company is to be entitled to redeem debentures it has issued is, of course, a matter of express contract, and in modern debentures and trust deeds is usually the subject of detailed provision. Not infrequently, however, the question is raised as to a company's power to redeem at an earlier date than that fixed by the debentures themselves, and is generally occasioned by the fact that the company finds that it would be more profitable to pay off the principal moneys at once rather than continue for a number of years to pay under the terms of the debentures a higher rate of interest

than is at the time commonly obtainable. In such cases it is sometimes necessary to consider the effect not only of the express provisions and their proper interpretation, but also the general law relating to the acceleration of the time of redemption of mortgages.

I think it would be convenient to look first at some of the more usual conditions as to redemption which are to be found in debentures and trust deeds. Generally debentures are made payable at the end of a fixed period. The company may be given power to redeem before maturity on payment of a premium or even without the payment of a premium if notice is given to the debenture-holder of the company's intention to pay off the debenture, and after the expiration of such period from the time of the giving of the notice as is specified in the debenture. Such provisions as these are straightforward enough, and do not offer a great deal of difficulty either in interpretation or in application. I ought also to mention that under s. 79 (1), Companies Act, 1929, if a charge becomes void for want of registration the money secured at once becomes payable.

In addition, however, to the main scheme, if I may so call it, of the redemption of a debenture, there are also almost invariably specified events on the happening of which "the principal moneys shall immediately become payable" or "the security shall become enforceable." (We shall see that the two expressions may have a different practical result.) The commonest of these are if the company is in default in the payment of interest and the debenture-holder gives notice calling in his principal, or, secondly, if the company is either compulsorily or voluntarily wound up. Sometimes, too, the appointment of a receiver, the levying of distress, the breach of any obligation by the Company, are made operative events for the exercise of his remedies by a debenture-holder. Now, these additional provisions are clearly for the protection of the debenture-holders to enable them to have recourse to their security if it is being threatened; but the wording of the relevant clause may have the effect not only of giving the debenture-holder the right to repayment of his principal but also of entitling the company to insist, whatever the debenture-holder's wishes may be, to pay him off and redeem the security.

This appears clearly to be the result of a clause which provides that on the happening of one of the events specified "the principal moneys hereby secured shall immediately become payable." That was the wording of the particular clause in the case of *Re Simmer and Jack East Limited* [1913] W.N. 41. There debentures issued in 1904 were ultimately redeemable in 1923, though the company could redeem at any time after the 1st January, 1909, on the payment of a premium. Among the events specified on the happening of which the principal moneys became payable was the making of an order or the passing of an effective resolution for the winding up of the company. The company was compulsorily wound up, and it was sought to pay off the debenture-holders; the latter objected, and contended that "payable" meant only "payable at the option of the creditors," and that the company could only redeem compulsorily on payment of the premium. Swinfen Eady, J., however, said that he saw no room for the argument that "payable" meant "only payable at the option of the debenture-holder." In such circumstances, however, trustees for debenture-holders cannot be compelled by the company to release their security until they are satisfied that all the debentures are paid (see *Re General Motor Cab Co. Limited*, 56 SOL. J. 573).

If, then, the principal moneys are under the terms of a debenture "payable," the company can insist on repayment and redemption. It may be said that if it is in the power of the company to bring about one of the events, e.g., a voluntary winding up, which render the principal moneys payable and then insist on redemption contrary to the debenture-holder's wishes, the company is by accelerating the time of repayment, avoiding its true obligations and depriving the debenture-holder of his right to a security of an agreed duration. But the answer to this surely is that such a power is only the result of the contract and that the debenture-holder cannot complain if the contract is carried out. He should have made sure that it was couched in different terms. For example, if the wording of the relevant clause were that on the happening of the named events "the security should become enforceable," not "that the principal moneys should be payable," I think it is fairly clear (though I am unaware of any authority on the point) that the company could not when one of the events had occurred insist on repaying the principal; for the words "the security shall become enforceable" seem apt to bear the meaning only of enforceable at the instance of the person holding the security, and not of the mortgagor who surely cannot be said to be "enforcing the security" when he is paying off the mortgage money. Again, if a debenture-holder anticipates disappointment at the premature redemption of his mortgage he can require that if, for example, redemption takes place by reason of a voluntary winding up, he shall receive a premium by way of compensation.

Incidentally it appears that irrespective of express provisions in a debenture, the winding up of the company before the day specified in the debenture for repayment renders the money immediately payable, and entitles the debenture-holder at once to realise his security for the full amount of his principal, interest and costs: see *Hodson* v. *Tea Company*, 14 Ch. D. 859; *Wallace* v. *Universal Automatic Machines Company* [1894] 2 Ch. 547. These cases, however, only decide that repayment is enforceable at the instance of the debenture-holder, and do not suggest, nor do I see how on principle it could be suggested, that a winding up would entitle the company to insist on immediate redemption unless the terms of the debenture empowered it to do so.

After this brief survey of the form and effect of the more usual specific provisions as to redemption I should like to glance for a moment at the general law as to redemption of mortgages so far as it affects the question of a company's power to redeem debentures. The possibility of the lengthy postponement of redemption amounting to a clog on the equity cannot now arise, for you will remember that by s. 74 of the Companies Act, 1929:—

> "A condition contained in any debentures or in any deed for securing any debentures . . . shall not be invalid by reason only that the debentures are made irredeemable or redeemable only on the happening of a contingency however remote or on the expiration of a period however long, any rule of equity to the contrary notwithstanding."

A company therefore could not claim to redeem before the time fixed on the ground that the remoteness of that time is such that the equity of redemption is clogged. It is quite clear, too, that the general rule that a mortgagee cannot redeem before the expiration of the stipulated period (in the absence, that is, of express provisions so enabling him) is equally applicable to debentures; this principle was established in the case of *Browne* v. *Cole*, 14 Sim. 427, and has been followed and applied in a number of later cases. If, however, a mortgagee has demanded payment of his mortgage debt or has taken steps to compel payment of it, he cannot refuse a tender of his principal, interest and costs on the ground that he is entitled to six months' notice, or that the time fixed for payment by the proviso for redemption in the mortgage deed has not expired. That is to say, the mortgagor is entitled to redeem before the time fixed if the mortgagee disturbs the relation by taking steps to compel payment; and for this purpose entry into possession is sufficient, since entry into possession is in effect a demand for payment: see *Bovill* v. *Endle* [1896] 1 Ch. 648.

In the same way, if a debenture-holder who is entitled under the terms of his debenture to exercise his remedies on the default of the company or the happening of one of

the events specified, takes steps to compel payment, as, for example, by appointing a receiver, it would follow that the company could then insist on repayment and redemption, although there was nothing in the terms of the debenture empowering it to do so until a future time.

A Conveyancer's Diary.

Protection of Purchasers from Personal Representatives.

THE puzzling questions arising out of sub-ss. (5) and (6) of s. 36 of the A.E.A., 1925, have again been brought to my notice. I have dealt with this matter before, but I think that I might refer to it again. We do not seem to be any further forward towards a solution of the difficulties.

Sub-section (5) enacts that "any person in whose favour an assent or conveyance is made by a personal representative may require that notice of the assent or conveyance be written or endorsed on or permanently attached to the probate or letters of administration," and may require the production of the probate or letters of administration to show that that has been done.

That is a merely permissive provision so far as the purchaser is concerned.

It is sub-s. (6) which presents the difficulty. The sub-section reads as follows :—

> "A statement in writing by a personal representative that he has not given or made an assent or conveyance in respect of a legal estate shall, in favour of a purchaser, but without prejudice to any previous disposition made in favour of another purchaser deriving title mediately or immediately under the personal representative, be sufficient evidence that an assent or conveyance has not been given or made in respect of the legal estate to which the statement relates, unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration.
>
> "A conveyance by a personal representative of a legal estate to a purchaser accepted on the faith of such a statement shall (without prejudice as aforesaid and unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration) operate to transfer or create the legal estate expressed to be conveyed in like manner as if no previous assent or conveyance had been made by the personal representative."

The real point of difficulty here is the introduction of the words "without prejudice to any previous disposition made in favour of another purchaser deriving title mediately or immediately under the personal representative" in the first paragraph, and "without prejudice as aforesaid" in the second paragraph.

Those words seem to nullify the whole value and defeat what is presumably the intention of the sub-section.

It may be (probably was) the intention to enact that purchasers from a personal representative should have priority according to the date of the endorsements to be found on the probate or letters of administration. However inconvenient that might prove to be, at least that construction, if it could be adopted, would render these provisions intelligible. But as the sub-sections stand it is most difficult to see how that could be done and what is really achieved by them.

To take an illustration : A personal representative conveys for value to X, who neglects to have any endorsement made. Then the personal representative conveys the same estate to Y without, of course, disclosing the previous conveyance to X. The second purchaser, Y, inspects the probate or letters of administration and finds no endorsement thereon. In the conveyance to Y there is a statement that no previous assent or conveyance has been made and Y duly has an endorsement respecting his conveyance made.

Now, Y in such a case was, it would seem probable, intended to be entitled as against X "in like manner as if no previous assent or conveyance had been made by the personal representative"—but that is "without prejudice to any previous disposition made in favour of another purchaser." Consequently Y's conveyance is made effective but without prejudice to the conveyance to X.

I do not see what other construction is to be adopted without deleting the words "without prejudice," &c. There could be no justification for that.

Assume, however, that these words were omitted and a purchaser for value, relying upon the statement of the personal representative that no previous assent or conveyance had been made, could obtain priority by having his conveyance recorded by endorsement, that would not meet the difficulties.

In the first place, suppose that the original personal representatives were dead and those proposing to convey were executors by representation or an administrator *de bonis non* appointed by the court, how could such personal representatives make the statement that no previous assent or conveyance had been given or made ? I do not see how they could or how they could properly be advised to do so. All they could say would be that to the best of their knowledge there had been no previous assent or conveyance which would not meet the requirements of the sub-section. It seems, therefore, at any rate, that the sub-section is valueless except upon a sale by the original personal representatives.

Then, adopting a construction, however arrived at, which would give priority to purchasers according to date of endorsement, what is to happen if the probate or letters of administration cannot be found, or if a notice "permanently attached" had become detached ? A purchaser would then be in a dilemma.

That, of course, is exactly what would take place if the original personal representatives were proposing to commit a fraud by selling the same property twice over. If they were willing to state that no previous assent or conveyance had been made, they would hardly stick at losing the probate or administration or detaching a "permanently attached" notice if that could be done without leaving any obvious trace of it.

It is obvious that the sub-section could only be effectual where personal representatives were acting fraudulently, and I fail to see how it affords any protection against fraud.

If there is to be a registration of conveyances by personal representatives, it should be an official one, which an intending purchaser can search just as he can search at the Land Registry. This attempt to substitute for that, endorsements on a document in private hands which may be lost or mislaid, is highly inconvenient, for although there may, in fact, have been no endorsement upon it, the purchaser is placed in a difficult position if for some reason it cannot be produced.

The contents of a deed or other document of title which cannot be produced may be proved, and the absence of it reasonably accounted for, although that is not always easy, but it would be much more difficult and often impracticable satisfactorily to prove a negative, i.e., that there was no endorsement upon it nor any notice attached to it.

OLD BAILEY CENTENARY.

The centenary of the Constitution of the Central Criminal Court will be commemorated by the unveiling of a mural tablet in the central hall of the Sessions House, Old Bailey, on Thursday, the 1st November. The ceremony will be performed by the Lord Chancellor. In the evening a dinner, which has been arranged by the Central Criminal Court Bar Mess, will be given in Middle Temple Hall. Mr. Eustace Fulton, Treasury Counsel at the Central Criminal Court, will preside.

Landlord and Tenant Notebook.

Late Registration of Decontrolled Dwelling-house : *Stokes* v. *Little*.

THE decision of the Court of Appeal in *Stokes* v. *Little* (reported in *The Times* of the 18th October), is of immediate importance only to landlords of "Class C" houses, who should have registered them as decontrolled, but did not, before 18th October last, and to their tenants. Not a large class, for not only must the premises be within the Rent, &c. Acts, but they must have been decontrolled by virtue of s. 2 of the 1923 Act; their rateable value must not have exceeded £13 (country) or £20 (London) on the 1st or 6th April, 1931, respectively; and they must have been let, and let as a separate dwelling, immediately before the 18th July, 1933. All the required factors were present in the above case, plus the fact that the plaintiff had obtained a certificate, under the proviso to s. 2 of the 1933 Act, that there was reasonable excuse for his failure to make application for the registration of the dwelling-house within the specified three months, and had thereupon registered the premises. The issue, decided by the county court judge in the defendant's favour, was whether this late registration re-decontrolled the house, or whether it had the effect that the house would again be decontrolled (though decontrol of "Class C" dwellings has been suspended till Midsummer, 1938) if the landlord came into actual possession. But if the number of people immediately affected by the case is small, the judgments deserve notice as an illustration of the rules to be observed in interpreting ambiguous enactments generally.

Briefly to summarise what had to be interpreted: s. 2 (1) of the 1933 Act excludes "Class C" houses from the decontrol-by-possession (and decontrol by two years' lease) provisions introduced by the 1923 Act. The next sub-section directs the landlords of houses answering to the requirements I have mentioned to register them, and provides that if they do not the landlord will be deemed to have lost the advantage of decontrol—subject as thereinafter provided. Follows the proviso, on the meaning of which all depends. If late registration is allowed and effected, "section two of the Act of 1923 shall, notwithstanding anything in the last foregoing sub-section, apply to the dwelling-house *as from the date* on which the application for registration is made."

The view taken by the Court of Appeal of this enactment was, in effect, that it modified s. 2 of the 1923 Act. This must now read: decontrol is effected if the landlord was in possession when that Act came into force, or when he comes into possession, or when, having obtained a certificate of excuse, he applies for late registration. The difference is merely one of dates; there is no change in the conditions under which s. 2 of the 1923 Act is to operate. True, the conditions must have occurred already, but they are not abrogated; their effect is suspended and postponed.

(In the report before me, the judgment reads as if the court were under the impression that actual possession is the only title to decontrol created by s. 2 of the 1923 Act. It is not; the section also contains the provision for decontrol by acceptance of a two years' or longer term.)

As was to be expected, support was sought for the above conclusion in the immediate and less immediate context, and in his judgment Lord Wright stresses the "notwithstanding anything in the last foregoing sub-section," and this, as the last sub-section (1) deals with decontrolled property, covers past events. And secondly, the proviso is an exception to the primary enactment which laid it down that the houses owned by forgetful landlords were deemed to be within the principal acts.

I have not set out the arguments for the tenant as referred to in the judgment, because those interested will be able to find them, and more than the report at all events contains, in the "Notebook" of the 9th June (78 SOL. J. 403). I then supported the view taken by the county court judge in *Stokes* v. *Little* and respectfully criticised the judgment of another county court which went the other way. I do not mean by "then" that my views, which are immaterial, have altered; I notice that in the article referred to I took a wider view of the possibilities latent in a proviso than *The Times* report of the recent appeal gives Lord Wright.

It is, indeed, an unfortunate thing that the 1933 Act, which was not or need not have been hurriedly drafted, should be such as to occasion "considerable doubt," to use the words of Lord Wright's judgment, who also said that it was impossible for him to feel confident that the true meaning of the proviso had been ascertained. If "this obscure legislation" has this effect on a Court of Appeal, how must those whose quasi-estates in law depend upon it feel about it?

A matter some people may have to consider is the possible effect of this judgment on the exercise of the judicial discretion in granting or refusing certificates of excuse. I observe that Lord Wright's judgment says that the county court judge "will, no doubt, not certify if existing rights of tenants are prejudiced by the delay"; but the present procedure does not make it easy for the judge to direct his mind to that aspect of the matter, for the rules provide for *ex parte* applications for the certificates in question: see the Rent (Restrictions on Increase of) County Court Procedure Rules (S.R. & O., 1933, No. 995/L.30), r. 2; and the form of application (Form No. 18) says nothing about the tenant's side of the matter.

Our County Court Letter.

THE REMUNERATION OF ESTATE AGENTS.

IN *Roche* v. *Burgess*, recently heard at Bournemouth County Court, the claim was for £15 as commission on the sale of a business. The case for the plaintiff (who carried on business as Medley and Medley) was that (*a*) he had given the defendant the name of a prospective purchaser, who had in due course bought the business, as shown by the fact that the motor van was now registered in his name; (*b*) there was no denial of the instructions or retainer in the correspondence. The defendant's case was that he had given no definite instructions to the plaintiff to sell the business, as he was hoping for special terms, and his instructions were only provisional. The alleged purchaser (giving evidence for the defendant) stated (1) that he was not the proprietor of the business, but he admitted that he was in partnership with the proprietor, and had been given the defendant's address by the plaintiff, (2) the van was kept at his house, which was the only reason for it being registered in his name. His Honour Judge Hyslop Maxwell gave judgment for the plaintiff, with costs.

PARENTS' LIABILITY FOR SCHOOL FEES.

IN a recent case at Wandsworth County Court (*Lye* v. *Bishop*) the claim was for £2 10s., being a term's school fees in lieu of notice. The plaintiff's case was that (1) she had been headmistress for eight years of a private school at Barnes, which was attended by the defendant's daughter (aged five years) for three terms, (2) the child left at the end of the spring term, 1934, without notice, and had since attended another school next door, (3) the plaintiff's school had been closed in November, 1933, through an epidemic, and the child had been away seven weeks during her three terms, (4) this (coupled with her tender age) might account for her alleged backwardness, as the kindergarten mistress had left for personal reasons, and not on account of incompetence or complaints from the parents of several other children, (5) it was only a coincidence that the latter had also left. The defendant's case was that (*a*) his child had made no progress, after a year with the plaintiff, but had got on well at her present school, (*b*) the plaintiff also conducted a canine and feline specialist business, on the same premises as her school, which was not hygienic.

Corroborative evidence for the defendant was given by the parents of other ex-pupils of the plaintiff. On her behalf it was pointed out that the veterinary business was her son's, and (although his name was up at the school) there was no surgery there, as all the animals went to Twickenham. Mr. Registrar Willoughby gave judgment for the plaintiff, with costs and a certificate for counsel.

RECAPTION OF CHATTELS.

RESERVED judgment was recently given in the Liverpool Court of Passage in *Fitzgibbon* v. *Davies*, in which the claim was for damages for trespass. The plaintiff's case was that a man came to her house (saying that he was a bailiff and had come for the furniture) whereby she was overawed into submitting to the invasion. The defendant's case was that he had power to enter the house, and to remove the furniture, by virtue of a hire-purchase agreement. Sir W. F. K. Taylor, K.C. (presiding judge), remarked that the plaintiff was not a party to the agreement, which had been entered into on her behalf by a relative named Champion. The result was that the plaintiff was under no liability to the defendant, who could not justify the wrongful trespass of his agent. Judgment was, therefore, given for the plaintiff for £20 and costs.

Land and Estate Topics.

By J. A. MORAN.

AUCTIONEER LICENCES.

IT is quite an easy matter to become an auctioneer. All that is required is the sum of £10, which may be readily exchanged for the necessary licence. And, armed with this, it is open to any man, with capital, to take over palatial premises in a central thoroughfare, and, in gold letters displayed on his ornate window, give the public to understand he is duly licensed by His Majesty's Customs and Excise. In his case there may be no attempt to comply with any code of honour; and a certain section of the public may be taken in by his plausible ways and "cut" fees. This is the man whose wings want clipping, but, so far, there appears to be no general agreement as to the means to be adopted.

There is quite a substantial backing of registration as the easiest, and most direct way of getting rid of the nuisance; but the general feeling among auctioneers appears to be that this would not have the desired effect. A man might be able to put forward evidence of his personal character, his fitness, and his financial ability; but after he has parted from his inquisitors, without a stain on his character, who is there to decide whether or not he keeps up to the required standard of the profession? In all probability his code of conduct will be guided by his ambition or his personal necessities, and there will be nothing to prevent him from following his unscrupulous inclination.

In the case of recognised bodies, such as the Auctioneers and Estate Agents Institute and the Incorporated Society of Auctioneers and Landed Property Agents, all goes well; entrance is obtained by examination, and the councils are always ready to deal with authentic instances of professional misbehaviour. There are others, too, who must be considered—men of high standing and integrity who have the confidence of the public as well as their colleagues but have not seen their way to join an organisation. They, of course, would not be affected in the event of the insistence of the passing of an examination of an approved professional body before a licence is obtained. It is quite probable that a man who passed an examination with flying colours might not, at times, be inclined to maintain the standard of his colleagues, but in that case it would not be for long before he was brought over the coals if his council had the right, after a searching examination and clear, positive evidence, to deprive him of his licence. Authority such as this would, it is claimed, remove all the black sheep, including "mock" auctioneers—the fellows who have no consideration for the lean purses of domestic servants or credulous impecunious widows by exchanging what is practically nothing for something, and would have often found themselves in gaol but for the difficulty arising from lack of evidence. The amount at stake is, as a rule, small; and no person likes to admit having been so foolish as to be taken in by a plausible rascal.

The examinations of the leading professional organisations are based on sound practical lines, and there is no reason why any average intellect with a serious bent of mind, should not get through all right, especially as there is within range of all an authority that has reached a high eminence in the teaching profession. What the College of Estate Management, in its palatial quarters in Lincoln's Inn Fields, has done for its students is a matter of modern history, and if it does not succeed in making a success of an entrant, it is time to contemplate another sphere of influence in this competitive world.

I have tried to set down, in the simplest manner, what is the actual position at the present moment. Every auctioneer and estate agent of standing wants the profession to be free of encumbrances that tend to bring discredit on an ancient calling. How to effect this is a matter of opinion to which every well-wisher is entitled. But as long as there is a decided difference in the means to be adopted, the old order will prevail, and the unscrupulous individual who has parted with a £10 note, will find no obstacle to interfere with his questionable conduct.

Obituary.

HIS HONOUR E. G. HILLS, K.C.

His Honour Eustace Gilbert Hills, K.C., formerly Judge of County Courts on Circuit 3, and a Master of the Bench of the Inner Temple, died at Kendal, on Wednesday, 17th October, at the age of sixty-six. The youngest son of the late Herbert Augustus Hills, Judge of Appeal, International Courts, Alexandria, he was educated at Eton and Balliol College, Oxford. He was called to the Bar by the Inner Temple in 1894 and took silk in 1919. In 1924 he was made a Bencher of his Inn. He was referee under the Contributory Pensions Act from 1926 to 1929, when he was appointed a Judge of County Courts. He resigned early this year. From 1930 to 1933 he had also been Chairman of Cumberland Quarter Sessions, and from 1926 to 1929 he was a member of the Council of Legal Education.

MR. A. D. RUSSELL.

Mr. Alexander David Russell, M.A., LL.B., late first Puisne Judge of the Colony of Trinidad and Tobago, died recently at Port of Spain, Trinidad, at the age of seventy. Educated at Aberdeen University and Edinburgh University, he practised at the Edinburgh Bar until 1898, when he was appointed Chief Magistrate of Gambia Colony. He went to Trinidad and Tobago as second Puisne Judge in 1906, and in 1913 he was promoted to first Puisne Judge. He retired in 1923.

MR. A. PARKER.

Mr. Arthur Parker, solicitor, a partner in the firm of Messrs. Forshaw, Parker & Company, of Preston, died on Monday, 15th October, at the age of fifty-one. Educated at King William's College, Isle of Man, he served his articles with his father, and was admitted a solicitor in 1905. He practised at Blackpool on his own account for a time, before joining the firm of Messrs. Forshaw, Parker & Company shortly after the death of the senior partner, Mr. John Forshaw.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Pre-1926 Assent IN FAVOUR OF A PERSON MERELY EQUITABLY ENTITLED—LEGAL ESTATE—TRANSITIONAL PROVISIONS OF L.P.A., 1925.

Q. 3062. By will, dated 18th August, 1918, a testator appointed A B and C to be executors and trustees, and after certain legacies, gave, devised and bequeathed his real and personal estate not otherwise disposed of unto his trustees "Upon trust that my trustees shall pay thereout all my funeral and testamentary expenses and debts and shall stand possessed of the residue of my said real and personal estate . . . Upon trust to pay the net income thereof to A during her life and after her death . . . in trust for B absolutely." A predeceased testator who died on the 8th September, 1925, probate of his will being granted on the 10th October, 1925, to B and C. By assent in writing, dated 13th October, 1925, B and C assented "to the devise to B contained in the said will." B has sold a considerable part of the property and no question has arisen on the title, but a requisition has now been made that as the will devises the property to trustees the assent was not sufficient to pass the legal estate and a conveyance is necessary. *Tanqueray Williaume & Landau*, 20 Ch. D., pp. 456 and 479, is cited as the authority. Your opinion is sought as to whether the contention in the said requisition is sound, and if so, whether any outstanding legal estate will be got in under 1st Sched., Pt. II, of the L.P.A., 1925.

A. We are of opinion that the contention in the requisition is well founded. There is a considerable difference between the operation of an assent made before 1926 and one made after 1925. In the former case the assent passes the legal estate to the devisee under the will by virtue of the devise in such will, the assent merely operating to carry out such devise and not having the power to pass the legal estate apart from the devise (*Attenborough* v. *Solomon* [1913] A.C. 76). It is to be observed that s. 3 (1) of Pt. I of the Land Transfer Act, 1897, speaks of assenting "to any devise contained in (the) Will." In the latter case the assent has power to vest the legal estate apart from the provisions of the will (Ad. of E.A., 1925, s. 36 (1)). For instance, it is now possible to vest by way of an assent a legal estate in a person not actually directly entitled under the terms of the will to that legal estate, e.g., a person entitled by way of appropriation or a tenant for life. We thus agree that the assent of 13th October, 1925, by B and C to B failed to pass the legal estate. We express the opinion that the outstanding legal estate was got in by L.P.A., 1925, Sched. 1, Pt. II, paras. 3 and 6 (*d*).

Will—SETTLEMENT—NO EXECUTOR—DEATH PRE-1926—ADMINISTRATION WITH WILL ANNEXED—GRANT POST-1925—VESTING OF LEGAL ESTATE.

Q. 3063. The facts are, that on the 13th April, 1925, A made his will without appointing an executor and devised all his property to his wife for her life and upon her death to his two children. He died on the 14th December, 1925, and letters of administration with the will annexed were granted to his widow and his son on the 19th April, 1926. The question is, in whom did the legal estate vest on the 1st January, 1926? According to the L.P.A. Transitional Provision, 1st Sched., Pt. II (6) (*c*), where, at the commencement of that Act the land is settled land, the legal estate shall vest in the tenant for life entitled under the S.L.A., 1925, to require a vesting deed to be executed in his favour, or in the personal representative, if any, in whom the land may be vested. Since the land affected was not vested in the personal representatives on the 1st January, 1926, because the grant of letters of administration had not then been taken out, it seems that the legal estate vested on that date in the tenant for life. But the Act speaks of a tenant for life entitled under the S.L.A., 1925, to require a vesting deed to be executed in his favour. Does this mean that a tenant for life is not entitled to require a vesting deed to be executed in his favour until administration has been completed by the personal representatives? If such is the case, then it would appear that the legal estate would vest in the personal representatives by virtue of para. 6 (*d*) of the same schedule.

A. We express the opinion that whatever may have become of the legal estate as between the date of the death of A and that of the grant in his estate it vested in the administrators on the making of and by virtue of the grant (Ad. of E.A., 1925, ss. 1 and 3, and in particular the words in s. 1 (1) "not withstanding any testamentary disposition thereof.") If the tenant for life took the legal estate in this case it would be by virtue of the testamentary disposition, which is expressly excluded. We would observe that L.P.A., 1925, Sched. 1, Pt. II, is applicable to the state of affairs extant on the 1st January, 1926, para. 6 (*d*), could not therefore be applicable in this case as at the crucial moment no personal representatives existed. We do not think that a tenant for life can be said to be entitled to a vesting instrument unless and until the claims and duties of the personal representatives are satisfied and discharged.

Right of Way—PROOF OF DEDICATION—EFFECT OF PUBLIC USER.

Q. 3064. A is a tenant for life. The estate has been in strict settlement for about a hundred years. Over part of the estate there is a defined public footpath which is marked on a very old ordnance survey. It can be proved conclusively that the public have made use of the path. The owner or his tenants have now closed the path and have destroyed stiles that were on the path. The owner lives about sixteen miles away from here, and so does his agent. The owner maintains that there has been no dedication, as there is no person who could have made any dedication during the last hundred years. I would be glad in the circumstances if you would let me know if the public can establish a public path.

A. In a case of this kind it needs to be understood that the question does not depend upon *user*, but upon dedication: see judgment of Neville, J., in *Holloway* v. *Egham U.D.C.*, 72 J.P., at p. 434, and if it be true, as is alleged, that there has been no person who could have dedicated, then it becomes necessary to consider the alternatives presented by the two sub-sections (1) and (2) of s. 1 of the Rights of Way Act, 1932; and when those alternatives come to be considered it must also be borne in mind that the ultimate question is one of *intention* to dedicate. The position of A therefore would appear to be a very strong position assuming that he can prove his assertion.

Mr. Charles Alfred Jones, C.B.E., solicitor, of Caernarvon, Deputy Constable of Caernarvon Castle, left £7,846 (net personalty nil).

To-day and Yesterday.

LEGAL CALENDAR.

22 OCTOBER.—Francis North, the third son of Dudley, fourth Lord North, was born at Kirtling, in Cambridgeshire, on the 22nd October, 1637. There was a long legal tradition in the family from the first Lord North, who was King's Serjeant under Henry VIII, and married the widow of Chief Baron Brooke. Accordingly, young Francis entered the Middle Temple, and knowing that his father was a needy man with fourteen children to provide for, he worked hard and unremittingly on an allowance of about £80 a year which, after his call in 1661, was curtailed. Twenty-one years later he became Lord Keeper.

23 OCTOBER.—On the 23rd October, 1882, Charles Soutar was placed at the Bar of the High Court of Justiciary, Edinburgh, accused of violating the sepulchres of the dead by forcibly removing the body of Lord Crawford from its coffin and carrying it away from the family vault at Dunecht. The prisoner was a poacher who had admittedly been in the neighbourhood on the night the outrage was committed. His story was that in a wood he had fallen in with a number of mysterious masked men carrying off the body and that by their threats they had frightened him into secrecy. He was, however, convicted of participating in the crime and sentenced to five years' penal servitude.

24 OCTOBER.—On the 24th October, 1836, an inquiry took place in the Council Chamber of Lincoln's Inn before Mr. Stirling, and a jury of benchers and other legal gentlemen, to investigate the circumstances of the discovery of a skeleton in New-square, where workmen had been digging at No. 9. Medical evidence showed that the bones had been under ground for more than half a century and that they belonged to a male not exceeding twenty-five years of age. The longest memories in the Inn could not recall anything to account for the presence of the bones.

25 OCTOBER.—On the 25th October, 1683, Sir William Scroggs, formerly Lord Chief Justice, died at his town house in Chancery-lane.

26 OCTOBER.—On the 26th October, 1830, several sailors of the "Inglis," an East Indiaman, were tried at the Admiralty Sessions for mutiny. Captain Dudman, the commander of the ship, had apparently in the course of the voyage been guilty of considerable brutality—in particular, there had been some very severe floggings. Resentment grew when a man who had retorted when the captain called him "an Irish son of a bitch," was put in irons. His comrades forcibly demanded his release and obtained it. They were convicted of riotously assembling and assaulting the captain and sentenced to two months in Newgate.

27 OCTOBER.—"St. Albans, Oct. 27, 1672. Dear Mother' I thanke you for my Bow and Arrows which I shall never use But when my master Gives me leave to play. I shall hereafter take more care of my spelling and writing even without ruled lines. My mistress was well brought to Bed of a Daughter on Sunday was Seaven-night who is to be Christened to day. I hope my Brothers John and Spencer are both well. I present my humble Duty to my Father and Mother with my love to my Brothers remaining Your ever obedient Sonne, William Cooper." So at eight years the future Lord Chancellor Cowper could not spell his own name.

28 OCTOBER.—On the 28th October, 1867, the trial of the Fenian "Manchester Martyrs" opened in circumstances unparalleled in modern times. The prison van was escorted to the Assize Court by 500 Highlanders and a squadron of Hussars. The corridors of the court were filled with armed men. The hearing lasted for four days before Justices Blackburn and Mellor, and the five men, accused of the murder of Police-Sergeant Brett, were found guilty and sentenced to death.

THE WEEK'S PERSONALITY.

Lord Chief Justice Scroggs is an ugly name in legal history, whether regarded judicially or euphonistically. They say that his father was a one-eyed butcher, near Smithfield Bars, and his mother a big fat woman with a red nose like an ale wife. Whatever may be said of the product of this peculiar pair, he had talent. He was a fluent speaker and "had many good turns of thought and language." Here is an impression of him: "His person was large, visage comely and speech witty and bold. He was a great voluptuary and companion of the high court rakes. His debauches were egregious and his life loose." It was said of him that "he could not avoid extremities. If he did ill, it was extremely, and if well, in extreme also." What would have happened had he followed the career for which he was originally designed one dare not conjecture. He was destined for the Church. Perhaps he would have made an extremely holy bishop. Perhaps not. As it was, he fought for the King in the Civil War as an infantry captain. After he took up the law, a brazen face, loud voice and pitiless tongue raised him to preside in the King's Bench, still swearing and drinking "to the great disparagement of the dignity" of his place.

EARLY TO COURT.

It seems that a recent ministerial decree ordering work to start in certain courts at a quarter past eight was not an immediate success in Paris. On the day it came into force the magistrates were there in time, but so few practitioners turned up that an adjournment was necessary. The experiment seems to be a reversion to the old principle of early to court and early to rise, prevailing in sixteenth century Paris, when the judges had to take their seats at six, under pain of losing a day's salary, and worked till midday. Fortescue, C.J., has left a somewhat similar picture of our own judges in the fifteenth century: "The judges of England do not sit in the King's Courts above three hours in the day, that is, from eight in the morning till eleven. The Courts are not open in the afternoon . . . The judges when they have taken their refreshment spend the rest of the day in the study of the laws, reading of the Holy Scriptures and other innocent amusements." Till comparatively modern times, the courts at Westminster used to sit at ten. However, when Willes, J., who lived in the country, was appointed to the Common Pleas, the practice of sitting half an hour later was inaugurated so as to give him time to arrive.

EAST OF ALDGATE.

The retirement of His Honour Judge Cluer, after thirty-nine years' judicial service as magistrate and county court judge, removes a unique figure from the active legal world. It will not be easy to find another with so shrewd a knowledge of life beyond Aldgate. Of some modern developments he had little good to say. Cycling to court, as was his habit, he had not much praise for motorists, and the telephone in his home brought him little comfort while he kept it. He used to relate how he was given a number similar to that of a butcher and "was frequently rung up at midnight for meat to be delivered." Stories gathered thick round Shoreditch County Court. There was the Jew sued as surety whom he told: "You don't read your own Book or the words of the wisest of men: 'He that is surety for a friend shall smart for it.'" There was the alleged deaf witness who heard quite well when the judge dropped his voice to say he would adjourn the case. But the story I prefer is that of the daylight air raid when the judge stopped a rush to the door with the words: "Let us go on. If we are to die, let us die like brave Englishmen." The hearing was resumed.

Notes of Cases.

High Court—Chancery Division.

London and North Eastern Railway Company *v.* Hardwick Colliery Company.

Farwell, J. 16th October, 1934.

Damage to Railway—Letting down Surface—Liability of Mineowner—Contribution—Area of Protection—Mines (Working Facilities and Support) Act, 1923, s. 85 (*b*) (2).

In this action the plaintiff railway company claimed a declaration that the defendant colliery company were liable under s. 79 (*a*) of the Mines (Working Facilities and Support) Act, 1923, to contribute to the expenses incurred by the plaintiff company in making good the damage caused to their railway by the working by the defendants of minerals lying under an area of protection. It was admitted that the defendant company had the right to let down the surface. The defendant company had worked certain minerals under s. 79 (*a*) under a protected area, and as a result of such working the plaintiffs had suffered damage and had called on the defendants to contribute towards the expense of making the damage good. The plaintiffs contended that s. 85 (*b*) (2) did not deprive them of their right to contribution. The defendants submitted that they had acquired a right to let down the surface antecedent to acquisition by the plaintiffs of their interest in the surface, and therefore they were under no liability to pay a contribution.

Farwell, J., in giving judgment, said the action raised a question as to the construction of s. 85 (*b*) (2). The defendants said that the persons from whom they derived title were three in number and those three all had a title antecedent to the date of the acquisition of the surface by the plaintiffs. Those three persons, the defendants said, had the right to let down the surface, and that being so, the right which the defendants had to let down the surface was derived from a title antecedent to the railway's acquisition of the surface. The whole matter turned on the question of construction of the language of the sub-section. It was difficult to see what escape there was from the construction that the right to let down the surface was a right in the mineowner derived by him from a title granted to him antecedent to the acquisition by the railway company of the surface. To put it in another way, in order that the mineowner might avail himself of the sub-section he had to show that by a title granted to him antecedent to the acquisition by the company of the surface he had a right to let down the surface. If he could show that, he was clearly within the sub-section. If he could not show that, he was not within the section. He (his lordship) felt compelled to come to the conclusion that it availed the mineowner nothing that the person from whom he derived the title to the minerals had some title antecedent to the acquisition of the surface by the railway company. His lordship accordingly gave judgment for the plaintiffs.

Counsel: *Gavin Simonds*, K.C., and *W. E. Vernon*; *W. C. Cleveland-Stevens*, K.C., and *Charles Romer*.

Solicitors: *J. Buchanan Pritchard; Ridsdale & Son* for *Shipton, Hallewell & Co.*, Chesterfield.

[Reported by S. E. Williams, Esq., Barrister-at-Law.]

In re Edwardes Square Garden Committee: Smith and Others *v.* Mitchell.

Clauson, J. 18th October, 1934.

Garden Committee—Disqualification by Sex.

This was an originating summons taken out by certain householders in occupation of dwelling-houses in Edwardes-square to have it determined whether women are disqualified or not by reason of their sex from membership of the Edwardes-square Garden Committee. Section 43 of the Kensington Improvement Act, 1851, provides that for maintaining and keeping in order and repair the said square and gardens the owner of the ground wherein such garden is set out and his agent, together with the male inhabitant householders, shall be appointed a committee for the care and management of such garden, and they shall have power to appoint a sub-committee. The defendant to the summons was Miss N. B. Mitchell, the secretary of the garden committee. The Improvement Act, 1851, constituted garden committees for various squares and gardens in Kensington, one being Edwardes-square, and by s. 41 provided that the garden committee should consist of the male inhabitant householders. Lately certain women who lived in the square desired to sit on the garden committee, and to be appointed to the sub-committee, and the question was whether the Sex Disqualification (Removal) Act, 1919, applied to the case. It was contended that the membership of a committee was a "public function" within the Act, and that it required some stretch of imagination to call the supervision of a private garden a public function.

Clauson, J., in giving judgment, said that the garden committee was given power to make bye-laws for the proper management of the square. That power had the result that the bye-laws were of legislative authority, and any member of the public who infringed a bye-law committed an offence for which he might appear before a magistrate and be subjected to a penalty. In those circumstances the garden committee thus constituted by statute exercised a public function, and there was the element of publicity that they made bye-laws which would bind the public. If he was right in so holding it seemed to him to follow by reason of the provisions of the Sex Disqualification (Removal) Act, 1919, that so much of the Kensington Improvement Act, 1851, which provided that membership of the garden committee should be confined to the male inhabitants was repealed by the Disqualification Act, and therefore the provision in the Act of 1851 that only the male sex should sit on the garden committee had ceased to operate.

Counsel: *Horace Freeman; Harold Simmonds.*

Solicitor: *A. E. Britton.*

[Reported by S. E. Williams, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Dunn Trust, Ltd. *v.* Asprey.

Humphreys, J. 11th October, 1934.

Moneylender—Interest on Previous Loan Unpaid—Action—Agreement by Borrower that Next Loan shall Include that Interest—Solicitor's Costs—Rate of Interest—Moneylenders Act, 1927 (17 & 18 Geo. 5, c. 21).

This was a claim by the Dunn Trust, Ltd., registered moneylenders, against the defendant, K. M. F. Asprey, as maker of a promissory note, dated the 14th February, 1934, for £100 payable to the plaintiffs plus interest at the rate of 480 per cent. per annum. There had been a previous transaction between the parties in 1933, when the defendant borrowed £50 from the plaintiffs and agreed to pay 480 per cent. The money was not repaid and a writ had to be issued. Judgment was obtained and a bankruptcy notice was issued before the principal sum was repaid. An action by the lenders for interest was still pending when the defendant again asked them for a loan of £50, and again agreed to pay 480 per cent. The plaintiffs were not prepared to lend the £50 asked for, but were willing to lend the defendant £30 if he agreed to pay an agreed sum of £50 in respect of interest on the previous loan and also £20 solicitor's costs. The defendant agreed to do that out of the money to be lent to him, which necessitated there being a loan for £100, £30 of which was paid over to the defendant in cash, £50 retained by the plaintiffs as interest on the previous transaction, and

£20 for solicitor's costs. No money having been repaid, after demand, on the second transaction, the moneylenders brought the present action.

HUMPHREYS, J., said that had the memorandum of the transaction merely stated that the plaintiffs had lent the defendant £100 in cash it would have been thoroughly misleading, but in fact it set out in detail how the sums of £30, £50 and £20 were to be dealt with, and was therefore correctly drawn up in accordance with s. 6 (2) of the Moneylenders Act, 1927, which requires that it must contain "all the terms of the contract." Secondly, there was no substance in the defendant's contention that the £20 solicitor's costs fell within s. 12 of the Act and that his agreement to pay them was therefore illegal. His (his lordship's) interpretation of that section was that when a moneylender agreed to lend money to a borrower he must not deduct from the amount that he lent his charges or expenses in relation to that transaction. That was not the present case. Thirdly, the defendant's agreement to pay £50 as interest owing on the previous transaction did not bring the case within s. 7 of the Act, which prohibits compound interest. All the transaction meant was that there was a sum agreed to be owing on which simple interest was to be payable unless the amount was paid at the due date. As regarded the interest claimed at 480 per cent., his lordship said that in all the circumstances he would allow 100 per cent. Judgment for the plaintiffs for £100 with interest at 100 per cent. from the 14th February to judgment.

COUNSEL: *Diamond*, for the plaintiffs; *Herbert Jacobs*, for the defendant.

SOLICITORS: *Woolfe & Woolfe; S. Fraulo.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Badger *v.* James.

Lord Hewart, C.J., Avory and du Parcq, JJ.

12th October, 1934.

LICENSING—PUBLIC MUSIC AND SINGING—WIRELESS IN HOTEL—FOR HOUSEHOLD PURPOSES—AUDIBLE IN PUBLIC ROOMS—PERFORMANCE NOT CONTINUOUS OR REGULAR—NO OFFENCE—PUBLIC HEALTH ACTS (AMENDMENT) ACT 1890.

This was an appeal, by case stated, by the Chief Constable of Sheffield from a decision of the Recorder of Sheffield. At a Court of Summary Jurisdiction Francis Stafford James, Chief Constable of Sheffield, preferred an information against Thomas Alfred Badger, charging him that on the 24th July, 1933, and other days within six months last past, he unlawfully was the occupier of the Millhouse Hotel, Abbeydale Road, Sheffield, which was kept for public music and public singing without a licence for that purpose, contrary to s. 51 of the Public Health Acts (Amendment) Act, 1890. The justices convicted Badger and fined him £10. On his appeal to the Recorder of Sheffield the following facts, *inter alia*, were proved or admitted: At all material times the appellant was the licensee and occupier of the hotel, and was not the holder of any licence for public music or public singing. He had bought and installed a powerful eight-valve wireless set at the end of a passage against a small portion of the wall between the tea room and one of the bed rooms. Close to it was a swing door, sometimes kept open and sometimes shut, which, when shut, separated the club room and parts of the house not used by the public from other parts used by the public. The set was bought by the appellant for the amusement of himself and his household, and he placed it in such a position that the programmes might be audible to them both when at work upstairs and when serving in the bar. It was not used only when the public were on the premises, but also at other times. The music and singing were to the knowledge of the appellant audible in a greater or less degree throughout the rooms and passages frequented by the public. The Recorder allowed the appeal and quashed the conviction, and the Chief Constable of Sheffield now appealed.

Lord HEWART, C.J., said that on the particular facts of the case the Recorder had come to the conclusion that what took place on the licensed premises did not amount to such a degree of continuous or regular use as would justify a conviction. It was impossible for the court to say that that was a conclusion to which the Recorder was not entitled to come, and the appeal must be dismissed.

AVORY and DU PARCQ, JJ., agreed.

COUNSEL: *C. Paley Scott*, K.C., and *G. W. Wrangham*, for the Chief Constable; *J. Willoughby Jardine*, K.C., and *W. A. Macfarlane*, for Badger.

SOLICITORS: *E. B. Gibson*, Town Clerk, Sheffield; *Doyle, Devonshire & Co.*, for *Howe & Co.*, Sheffield.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Higgs *v.* Higgs.

Sir Boyd Merriman, P., and Langton, J. 4th October, 1934.

HUSBAND AND WIFE—SUMMONS FOR WILFUL NEGLECT TO MAINTAIN—DIVORCE PETITION BY HUSBAND—SUCCESSIVE ADJOURNMENTS OF SUMMONS—ORDER MADE FINALLY IN ABSENCE OF HUSBAND—RESCISSION ON GROUND OF EXCLUSIVE JURISDICTION OF DIVORCE COURT—*R.* v. *Middlesex Justice, ex parte Bond* [1933] 1 K.B. 72; [1933] 2 K.B. 1, C.A., Followed.

This was an appeal from the magistrate sitting at Marylebone Police Court. On 25th September, 1933, the wife took out a summons for maintenance on the ground of alleged wilful neglect to maintain. On 6th October, 1933, the husband filed a petition for divorce on the ground of the wife's alleged adultery. On 9th October, 1933, the summons came before the magistrate, who adjourned it on hearing that a petition by the husband was pending. There were further adjournments, but finally on 21st May, 1934, the magistrate made an order directing the husband to pay maintenance to the wife at the rate of 17s. 6d. per week. On that occasion the husband was neither present nor represented. He now appealed against the order on the ground that the magistrate had no jurisdiction to make the order.

Sir BOYD MERRIMAN, P., in giving judgment, said that, in his view, as a matter of law, the magistrate ought not to have made the order—on the short ground that there was a divorce petition pending. The magistrate, however, had been placed in an impossible position by the non-attendance of the husband and might very well have supposed that the petition had ceased to be effective. . . . The moment a petition was presented in the Divorce Division for any form of matrimonial relief the court, by the combined effect of s. 190 (3) of the Judicature Act, 1925, the old practice of the Ecclesiastical Courts as preserved by s. 32 of that Act, and the group of Matrimonial Causes Rules, beginning with r. 57, had power to order alimony *pendente lite*. Neither the statute nor the rules said that it was an exclusive power, but, once the right of a wife to petition for alimony pending suit in that court arose, it seemed to him (his Lordship) that a passage in Mr. Justice Avory's judgment in *R.* v. *Middlesex Justices, ex parte Bond* [1933] 1 K.B. 72 at p. 80 applied with very great force. That judge said: "The inconvenience of holding that there is concurrent jurisdiction in the Divorce Court and in the justices is obvious, for if the justices may make an order, as in this case, there is nothing to prevent the husband from going to the Divorce Court the next day and asking, possibly successfully, for a contrary order. The question might see-saw between the two courts, producing an absolute scandal." That that was not a fanciful over-statement of the possibility was shown by the case of *Craxton* v. *Craxton* (1907), 71 J.P. 399. If there were undue delay in prosecuting a petition, a wife respondent had such remedies as the rules

provided for expediting the hearing or applying for dismissal of the petition for want of prosecution; and in the case of dismissal the magistrates' power would revive. On the broad ground stated by Mr. Justice Avory, he (the President) considered that magistrates ought not to deal with any question of maintenance at the instance of a wife when a petition in the Divorce Division was pending. The appeal would therefore be allowed, but without costs.

LANGTON, J., agreed.

COUNSEL: *A. L. Ungoed-Thomas*, for the appellant husband.

SOLICITORS: *Raymond, Oliver & Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

Rex *v.* Manser.

Lord Hewart, C.J., Avory and du Parcq, JJ.
8th October, 1934.

CRIMINAL LAW — EVIDENCE OF UNSWORN CHILD — NO CORROBORATION.

This was the appeal against conviction of Arthur Richard Manser, who was convicted at Sussex Assizes on the 15th July, 1934, of carnal knowledge of a girl under thirteen years of age and was sentenced to six months' imprisonment. The appellant, who was eighteen years old, lived next door to Barbara Wickenden, the girl against whom the offence was alleged to have been committed. The case for the Crown was that he was fishing at a pond near his home and was there joined by the girl Barbara, her little brother and her sister Doris, aged nine years, that he suggested a game of hide-and-seek, took the girl Barbara into a wood to hide and there committed the alleged offence. The testimony of Doris Wickenden, who gave evidence at the trial without being sworn, was substantially the only corroboration of the evidence of Barbara Wickenden.

Lord HEWART, C.J., in giving the judgment of the court, said that the grounds of appeal were, *inter alia*, that the verdict was against the weight of the evidence, and that there was no real corroboration of the story of the child. The Commissioner in his summing-up did tell the jury that it was dangerous to convict unless there was some corroboration of the girl Barbara's story, but nowhere was there any definition of corroboration which would satisfy the law as explained in *R.* v. *Baskerville* [1916] 2 K.B. 658, that corroboration must be evidence coming from an independent source which in some particular corroborates the evidence of the accuser and tends to implicate the accused person. There was one further matter which was the most important of all and, indeed, might be regarded as conclusive. The story of the little child Doris, who was nine years of age and who had given evidence without taking the oath, was treated as corroborative of the evidence of the girl Barbara. Now, by statute, the evidence of the little girl who had not been sworn was not to be accepted as evidence at all unless it was corroborated. The evidence of Doris ought to have been obliterated altogether from the case, inasmuch as it was not corroborated. It clearly was not corroborated by the evidence of Barbara. The intrinsic evidence adduced on the part of the prosecution was deficient, and rested to no small extent on the evidence of an unsworn child. The appeal would be allowed and the conviction quashed.

COUNSEL: *G. D. Roberts*, for the appellant; *H. J. Baxter*, for the Crown.

SOLICITORS: *Registrar of the Court of Criminal Appeal; The Director of Public Prosecutions.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Mr. John Howard Smith, solicitor, of King-street, W., left estate of the value of £130,962, with net personalty £95,470. He left £1,000 each to the poor boxes at Thames and Shoreditch Police Courts.

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Reviews.

Glen's Law Relating to Unemployment Assistance. By E. BRIGHT ASHFORD, B.A., of the Middle Temple and South-Eastern Circuit, Barrister-at-Law, assisted by ALEXANDER P. L. GLEN, Solicitor of the Supreme Court. 1934. Demy 8vo. pp. xii and (with Index) 176. London: Law and Local Government Publications, Ltd. 5s. net.

This book is written as a companion volume to "Glen's Public Assistance," to which there are frequent cross-references and an "addendum" giving the changes in the Poor Law Act. The text is written round the Unemployment Act, 1934, particularly Parts II and III. The book is written from a more general point of view than the ordinary legal text-book. Thus there is an excellent historical and explanatory introduction by Mr. W. D. Bushell, a former General Inspector in the Ministry of Health. Again, the subject being extremely complicated and the Act a new one, as yet unexplained by judicial decisions, the authors have wisely included in the notes passages from the Parliamentary utterances of Ministers, explaining the purpose and meaning of the various sections as they were debated. Again the book is made useful to social workers and all persons concerned with the unemployment problem by the inclusion of such matters as a report on the purpose and organisation of instruction centres and classes for unemployed boys and girls. The

Index, perhaps for reasons of economy, does not, by its arrangement, facilitate quick reference, but apart from this the book should be a useful handbook to many and various people.

The Law of Distress. By J. P. Eddy, of the Middle Temple, Barrister-at-Law. 1934. Crown 8vo. pp. xvi and (with Index) 135. London: Sweet & Maxwell, Limited. 6s. net.

This little book is designed, as the preface indicates, not only for legal practitioners but also for landlords and their bailiffs. It is consequently framed in simpler language than that of many legal text books and should therefore prove of great assistance to students. The cases are brought right up to date and are included in the text, so that the reader's attention is not distracted by footnotes. Paragraphs are headed by words in capital letters summarising the subject-matter, which makes for easy reference. An excellent feature of the book is the collection of forms, which the learned author has been at some pains to amass. These are found at the appropriate places in the text and give a real practical value to the book. Many of these are probably making their first appearance in a text book. Though the book does not profess to be a practice book, it might, for the sake of compendiousness, have been well to have "gone the whole hog" and have included specimens of pleadings in replevin actions. This is, however, a very trifling defect, and an otherwise admirable book is concluded by Appendices containing the relevant Statutes, Rules and Tables of Fees and some further forms and an adequate Index.

Books Received.

The Permanent Court of International Justice. A Treatise. By Manley O. Hudson, Member of the Permanent Court of Arbitration. 1934. Royal 8vo. pp. xxvii and (with Index) 731. New York: The Macmillan Company. 21s. net.

Taylor's Principles and Practice of Medical Jurisprudence. Ninth Edition. 1934. By Sydney Smith, M.D., F.R.C.P., D.P.H., and W. G. H. Cook, U.D. (Lond.), of the Middle Temple and Western Circuit, Barrister-at-Law. In two volumes. Royal 8vo. Vol. I, pp. viii and (with Index) 878. Vol. II, pp. (with Index) 973. London: J. & A. Churchill, Ltd. 63s. net.

A Guide to Lunacy Practice. By G. Crossman, B.A. (Oxon), of the Inner Temple, Barrister-at-Law, and John J. Wontner. 1934. Demy 8vo. pp. vii and (with Index) 151. London: Sir Isaac Pitman & Sons, Ltd. 10s. 6d. net.

The Law of Licensing. By C. C. Ross, M.A., of Lincoln's Inn, Barrister-at-Law. 1934. Demy 8vo. pp. xxi and (with Index) 265. London: Sir Isaac Pitman & Sons, Ltd. 12s. 6d. net.

Outlines of Local Government of the United Kingdom (and the Irish Free State). By John J. Clarke, M.A., F.S.S. Eleventh Edition. 1934. Crown 8vo. pp. x and (with Index) 308. London: Sir Isaac Pitman & Sons, Ltd. 5s. net.

Mews' Digest of English Case Law. Quarterly Issue, October, 1934. By G. T. Whitfield Hayes, Barrister-at-Law. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd.

There is a Tide . . . By Edward Wooll. 1934. Large Crown 8vo. pp. 362. London and Glasgow: Blackie & Son, Ltd. 7s. 6d. net.

AUTUMN ASSIZES.

The following days and places have been fixed for holding the Autumn Assizes on the North Eastern Circuit:—

Mr. Commissioner Porter, K.C.—Saturday, 3rd November, at Durham; Thursday, 15th November, at York. Mr. Justice Goddard and Mr. Commissioner Porter, K.C.—Thursday, 22nd November, at Leeds.

Societies.

The Magistrates' Conference.

Sir E. Marlay Samson, K.C., Chairman of Council, presided at the annual meeting and conference of the Magistrates' Association, held at Guildhall, on the 17th October. The conference was opened by the Lord Mayor, accompanied by the Sheriffs.

The first speaker at the morning session was Mr. A. Maxwell, of the Home Office, who opened a discussion on imprisonment in default of payment of fines and other sums of money. He pointed out that in England no less than twenty thousand people were imprisoned every year for this reason, whereas in Scotland the numbers were minute. A Departmental Committee had been considering the question, and had recently reported. When magistrates signed committal orders they expected the money to be paid, and in 97 per cent. of cases it was. In the remaining 3 per cent., however, the defaulter was taken to prison, and the worst aspect of the matter was that when a magistrate signed committal orders automatically in large numbers he did not necessarily know afterwards whether or not they had been put into operation. The Committee considered that no magistrate ought to shoulder such dreadful responsibility. Some magistrates made a point of being informed when the order was executed against a young defaulter, but all defaulters should be treated alike.

The Committee's chief recommendation was, therefore, that magistrates should have power, before signing committal orders, to have the defaulter arrested and brought before them in order that he might be examined as to his means and circumstances. It also recommended that payment by instalments should be ordered whenever possible, and that magistrates should have wider powers of ascertaining the circumstances of a defaulter through members of their own staff. This reform should, it was considered, result in a great diminution in the number of imprisonments, which were ineffective and very costly. In making maintenance orders, said Mr. Maxwell, magistrates should remember that they were considering the man's means and not his conduct, and that the payment must leave him sufficient for his own subsistence. Imprisonment in default of rates varied enormously in different towns according to the extent to which the rating authority compounded with landlords, and the extent to which ratepayers were educated to know that they could appear before the rating authorities or the magistrate and ask for special treatment. The recommendation of the Committee would apply to these defaulters as well.

Mrs. Lloyd Lane, barrister-at-law, then delivered a paper on the working of the Poor Persons Defence Act. She complained that England lagged behind Scotland and even Ireland in its provision for poor persons' defence. Even when free legal aid had first been given, the condition had been attached that the defence must be disclosed. The Poor Persons Defence Act, 1930, had abolished this restriction and had given magistrates discretion, in cases which by reason of the gravity of the charge or special circumstances seemed to demand it, to issue a legal aid certificate entitling the accused to be represented by a solicitor or counsel before the magistrates. When committing a person for trial magistrates might—and on a murder charge must—issue a defence certificate entitling the accused to the services of a solicitor and counsel at the trial. Mrs. Lane complained that these provisions did not seem to be used nearly enough. She gave some interesting figures which showed that, although summary courts now tried a large and increasing number of serious offences, the percentage of indictable cases in which certificates were issued was very small. One of the reasons was possibly that persons did not know that they could apply for legal aid. A notice was displayed in most courts, but its terms were too complicated for the ordinary somewhat illiterate man. She suggested a bold placard with the words, "If you want a solicitor and cannot afford one, ask the magistrate." She pleaded for the issue of a legal aid certificate to persons on examination, in order that an experienced advocate might decide on the line to take before the magistrates. The time for a defence certificate was the preliminary hearing, and not the trial at assizes or quarter sessions.

In the afternoon the Lord Chancellor, who is the Association's President, opened the proceedings with an address, in which he complimented the magistrates upon the devoted way in which they performed a somewhat thankless task. He reminded them that the Children and Young Persons Act would not become less important as years went on but more important in its beneficent effects upon the lives of successive generations of boys and girls. The Lords Lieutenants of counties and the local advisory committees had been active in the work of nominating lady magistrates to the panels of

the juvenile courts, and there would soon be no court without at least one woman magistrate. The Road Traffic Act, 1934, he continued, had been passed to make the roads safer and to reduce the large number of accidents. Parliament had now fulfilled its function, and only the magistrates could see that the Act was properly administered. They should decide each case on its merits but remember both sides, and not shrink from punishing motoring offenders according to their deserts. He also urged the need for some kind of standard, albeit an indefinite one, by which magistrates all over the country could award similar punishment for similar offences, so that the public mind might less often be shocked by glaring discrepancies in the punishment of like offences at different times.

The Chairman of Council, in moving the adoption of the report and accounts, reported a satisfactory growth of the Association during the preceding year.

"INDIFFERENT JUSTICE."

Lord ATKIN, addressing the conference on "Indifferent Justice," defined bias as an influence which deflected a judge from the end of administering justice equally to both sides. The law, he said, provided that a magistrate should not try any case in which he was personally interested, either financially or as a prosecutor. If, for instance, he were the owner of property against which an offence had been committed, he was not competent to try the offence. Similarly, if he were a member of a committee which had instituted the prosecution, he was ineligible; but if he merely paid a subscription to a society, such as the N.S.P.C.A., he would probably not be held to be biassed. If a biassed magistrate sat, the finding of the whole bench was invalidated. A magistrate might safeguard the position by fully disclosing his interest, and then if both parties agreed to his sitting they could not afterwards be heard to object. In cases of doubt, he would do well to leave the Bench and sit in the body of the court while the case was being heard. Much danger lurked in the practice of allowing interested parties to discuss the merits of individuals or of cases, and a magistrate should be especially on his guard against being biassed in his own home: he should make it a rule not to discuss cases with even his nearest and dearest. He should avoid personal prejudice for or against individuals or classes of persons. The ideal judge felt a stain upon justice as though it were a wound.

The conference was closed by a paper delivered by Miss B. KITSON, on "Observation Centres and Remand Homes." She regretted that the Children and Young Persons Act had not provided the observation centres which had been recommended. She discussed various means of dealing with young persons on remand, concluding that the most satisfactory type of remand home was the large centre maintained by one or more local authorities, with a well-paid superintendent and assistants. At smaller homes it was less easy to arrange for the education which nowadays was so essential, and a superintendent without assistants was worked day and night and could not always give of his best. The choice of a superintendent full of good sense and human sympathy was all-important, but it was equally important that his wife should be similarly gifted. Some superintendents disliked voluntary helpers, but these could often give valuable educational help and a wider outlook on life to the children.

United Law Society.

A meeting of the United Law Society was held on the 22nd October in the Middle Temple Common Room. Mr. R. E. Ball proposed: "That International Sporting and Athletic Contests should be abolished." Mr. J. Halpin opposed. Messrs. G. B. Burke, R. W. Bell, J. Wentworth Pritchard, J. H. Menzies and O. T. Hill spoke and Mr. Ball replied. The motion was lost by two votes.

The Hardwicke Society.

A meeting of the Society was held on Friday, 19th October, at 8.15 p.m., in the Middle Temple Common Room, the President (Mr. A. Newman Hall) in the chair. Mr. J. Boyd Carpenter moved: "That this House would view with considerable distaste the nationalisation of the means of production, distribution and exchange." Mr. Colin Pearson (ex-President) opposed. There also spoke Mr. Whittin, Mr. A. H. Bray, Mr. A. L. Ungoed-Thomas, Mr. Llewellyn Thomas, Mr. Walter Stewart, Mr. J. A. Petrie, Mr. A. A. Baden Fuller, Mr. T. K. Wigan, Mr. T. H. Mayers (Hon. Treasurer), The Hon. F. P. Howard (Hon. Secretary), and Mr. McMullen. The hon. mover having replied, the House divided, and the motion was carried by eight votes.

University of London Law Society.

The University of London Law Society held a successful moot last Tuesday, which was presided over by Mr. Justice Goddard. Counsel for plaintiff, J. Mascal, Esq., A. M. Kelly, Esq.; counsel for defendant, V. P. M. Jo'c Stranders, Esq., LL.B., Barrister-at-Law, I. W. Davies, Esq. A cordial vote of thanks was passed to Mr. Justice Goddard by the President, A. Goodman, Esq., LL.B. The action concerned a dispute which had been taken to the House of Lords, the issue being a signature on a cheque, which it was alleged had been obtained through misrepresentation. During argument "Byle on Bills" was cited, and Mr. Justice Goddard recalled how that authority was universally accepted. The learned author, he said, was in the habit of riding to the Law Courts on a white horse, and when the judge appeared, bystanders would affectionately say "Here's Byles on 'Bills,'" which showed how well his book was known.

Law Students' Debating Society.

At a meeting of the society held at The Law Society's Court Room on Tuesday, 23rd October (Chairman, Mr. P. H. North-Lewis), the subject for debate was: "That the case of *Monk* v. *Warbey* (50 T.L.R. 263) was wrongly decided." Mr. P. H. Dean opened in the affirmative, Mr. H. Peck opened in the negative; Mr. J. R. Campbell Carter seconded in the affirmative, Mr. R. S. Mudie seconded in the negative. The following also spoke: Messrs. S. Sansom, J. E. Terry, E. Garber (visitor), Miss H. M. Cross, Messrs. L. J. Frost, E. V. E. White, P. W. Iliff, W. Teggen (visitor) and W. M. Pleadwell. The opener having replied, and the Chairman having summed up, the motion was lost by four votes. There were nineteen members and five visitors present.

The Auctioneers' and Estate Agents' Institute.

A meeting of the Agricultural Members of this Institute will be held at 29, Lincoln's Inn Fields, W.C.2, on Thursday, the 1st November, at 2.30 p.m., when Mr. Alfred J. Burrows (Past-President and Member of Council) will deliver a paper entitled "The Tithe Question."

Also, a Sessional Evening Meeting of the members will take place at the Institute at 7 p.m. on the same day, when Mr. David M. Lawrance, B.Sc., Barrister-at-Law (Fellow), will read a paper entitled "Coming Changes in the Law of Arbitrations."

Rules and Orders.

I, JOHN VISCOUNT SANKEY, Lord High Chancellor of Great Britain, by virtue of section 10 (5) of the Unemployment Insurance Act, 1920, Order 55B of the Rules of the Supreme Court, and all other powers enabling me in this behalf, Do hereby nominate the Honourable Mr. Justice Branson to be the single Judge of the High Court to whom appeals shall be made under proviso (l) of subsection (1) of section 10 of the said Act.

Dated the 19th day of October, 1934.

(Sgd.) *Sankey*, C.

I, JOHN VISCOUNT SANKEY, Lord High Chancellor of Great Britain, by virtue of proviso (l) of subsection (1) of section 89 of the National Health Insurance Act, 1924, and all other powers enabling me in this behalf, Do hereby nominate the Honourable Mr. Justice Branson to be the Judge of the High Court to whom appeals shall be made under the said proviso (l) of subsection (1) of section 89 of the said Act.

Dated the 19th day of October, 1934.

(Sgd.) *Sankey*, C.

I, JOHN VISCOUNT SANKEY, Lord High Chancellor of Great Britain, by virtue of paragraph 6 (1) of the temporary Rules of Procedure set out in Part III of the First Schedule to the Public Works Facilities Act, 1930, and all other powers enabling me in this behalf, Do hereby select the Honourable Mr. Justice Branson to be the Judge of the High Court for the purpose of hearing applications under Part III of the First Schedule of the said Act.

Dated the 19th day of October, 1934.

(Sgd.) *Sankey*, C.

BOROUGH OF WALSALL.

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on Thursday, the 8th day of November, 1934, at 10 o'clock in the forenoon.

Legal Notes and News.

Honours and Appointments.

The King has approved a recommendation of the Home Secretary that Mr. ARCHIBALD SAFFORD, M.C., be appointed Recorder of Faversham, to succeed Mr. J. C. Swinburne-Hanham, who has resigned. Mr. Safford was called to the Bar by the Middle Temple in 1913.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. G. H. B. STREATFEILD be appointed Recorder of Huddersfield, to succeed Mr. Arthur Morley, K.C., who has been appointed Recorder of Sheffield. Mr. Streatfeild, who was called to the Bar by the Inner Temple in 1921, was appointed Recorder of Rotherham in 1932.

The King has been pleased to approve the appointment of Mr. SAMUEL LOWRY PORTER, K.C., as a Commissioner of Assize, to go the North-Eastern Circuit.

The Archbishops of Canterbury and York, with the approval of the King, have appointed Sir PHILIP WILBRAHAM BAKER-WILBRAHAM, Dean of the Arches, Master of the Faculties, and Vicar-General, to be the Judge of the Provincial Courts of Canterbury and York. The Archbishop of York has also appointed Sir Philip to be Official Principal or Auditor of the Chancery Court of York. Sir Philip Baker-Wilbraham was called to the Bar by Lincoln's Inn in 1901.

The Attorney-General has appointed Mr. GEOFFREY GEORGE RAPHAEL as Junior Counsel for the Crown in Appeals to the County of London Sessions and as Emergency Counsel to represent the Director of Public Prosecutions in cases before the Court of Criminal Appeal in succession to Mr. Travers Christmas Humphreys. Mr. Raphael was called to the Bar by the Inner Temple in 1924.

In consequence of the appointment of Mr. Cecil William Lilley as Judge of the County Courts on Circuit No. 39, the Attorney-General has appointed Mr. WILLIAM ARTHIAN DAVIES to be Junior Counsel to the Ministry of Labour. Mr. Davies was called to the Bar by the Inner Temple in 1925.

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED.

INTERIM DIVIDEND.

An interim dividend of 4 per cent., less income tax, on account of the year 1934 was paid on the 20th October. This is at the same rate as last year, when it was followed by a final dividend of 8 per cent.

INCORPORATED SOCIETY OF AUCTIONEERS.

At a meeting of the Council of the Incorporated Society of Auctioneers and Landed Property Agents, held on Friday, 19th October, Mr. A. G. Minter was appointed President-elect for the year 1935-6.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Witness. Part I.	MR. JUSTICE BENNETT. Witness. Part II.
	Mr.	Mr.	Mr.	Mr.
Oct. 29	More	Jones	*Hicks Beach	Jones
,, 30	Hicks Beach	Ritchie	*Blaker	*Hicks Beach
,, 31	Andrews	Blaker	*Jones	Blaker
Nov. 1	Jones	More	Hicks Beach	*Jones
,, 2	Ritchie	Hicks Beach	*Blaker	Hicks Beach
,, 3	Blaker	Andrews	Jones	Blaker
	GROUP I. MR. JUSTICE CROSSMAN. Non-Witness.	MR. JUSTICE CLAUSON. Non-Witness.	GROUP II. MR. JUSTICE LUXMOORE. Witness. Part II.	MR. JUSTICE FARWELL. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Oct. 29	Blaker	Andrews	*More	*Ritchie
,, 30	Jones	More	Ritchie	*Andrews
,, 31	Hicks Beach	Ritchie	*Andrews	*More
Nov. 1	Blaker	Andrews	More	*Ritchie
,, 2	Jones	More	*Ritchie	Andrews
,, 3	Hicks Beach	Ritchie	Andrews	More

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 8th November, 1934.

	Div. Months.	Middle Price 24 Oct. 1934.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	114½	3 10 1	3 2 1
Consols 2½%	JAJO	81⅞	3 1 2	—
War Loan 3½% 1952 or after	JD	106	3 6 0	3 1 3
Funding 4% Loan 1960-90	MN	115½	3 9 5	3 2 8
Funding 3% Loan 1959-69	AO	99½	3 0 4	3 0 6
Victory 4% Loan Av. life 29 years	MS	113¼	3 10 8	3 5 9
Conversion 5% Loan 1944-64	MN	118½	4 4 5	2 13 4
Conversion 4½% Loan 1940-44	JJ	112¼	4 0 2	2 5 6
Conversion 3½% Loan 1961 or after	AO	105	3 6 8	3 4 4
Conversion 3% Loan 1948-53	MS	102⅜	2 18 4	2 15 0
Conversion 2½% Loan 1944-49	AO	98⅛	2 10 9	2 12 6
Local Loans 3% Stock 1912 or after	JAJO	94	3 3 10	—
Bank Stock	AO	367½	3 5 4	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	85½	3 4 4	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	93	3 4 6	—
India 4½% 1950-55	MN	111½xd	4 0 9	3 10 11
India 3½% 1931 or after	JAJO	96	3 12 11	—
India 3% 1948 or after	JAJO	84	3 11 5	—
Sudan 4½% 1939-73 Av. life 27 years	FA	117	3 16 11	3 10 3
Sudan 4% 1974 Red. in part after 1950	MN	110	3 12 9	3 3 10
Tanganyika 4% Guaranteed 1951-71	FA	112	3 11 5	3 0 9
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	102	2 18 10	2 16 0
L.P.T.B.4½% "T.F.A." Stock 1942-72	JJ	112	4 0 4	2 12 2
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	107	3 14 9	3 10 6
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	104	3 12 1	3 7 8
Canada 4% 1953-58	MS	111	3 12 1	3 4 4
Natal 3% 1929-49	JJ	99	3 0 7	3 1 10
*New South Wales 3½% 1930-50	JJ	101	3 9 4	—
*New Zealand 3% 1945	AO	99	3 0 7	3 2 7
Nigeria 4% 1963	AO	109	3 13 5	3 10 0
Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 4
South Africa 3½% 1953-73	JD	106	3 6 0	3 1 6
*Victoria 3½% 1929-49	AO	100	3 10 0	3 10 0
*W. Australia 3½% 1935-55	AO	100	3 10 0	3 10 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	93	3 4 6	—
Croydon 3% 1940-60	AO	98	3 1 3	3 2 4
Essex County 3½% 1952-72	JD	106	3 6 0	3 1 3
*Hull 3½% 1925-55	FA	102	3 8 8	—
Leeds 3% 1927 or after	JJ	93	3 4 6	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	104	3 7 4	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	80	3 2 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	94	3 3 10	—
Manchester 3% 1941 or after	FA	94	3 3 10	—
Metropolitan Consd. 2½% 1920-49	MJSD	98	2 11 0	2 13 4
Metropolitan Water Board 3% "A" 1963-2003	AO	94	3 3 10	3 4 4
Do. do. 3% "B" 1934-2003	MS	95	3 3 2	3 3 7
Do. do. 3% "E" 1953-73	JJ	99	3 0 7	3 0 10
Middlesex County Council 4% 1952-72	MN	111	3 12 1	3 3 9
Do. do. 4¼% 1950-70	MN	114	3 18 11	3 7 1
Nottingham 3% Irredeemable	MN	93	3 4 6	—
Sheffield Corp. 3½% 1968	JJ	105	3 6 8	3 5 1
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	110	3 12 9	—
Gt. Western Rly. 4½% Debenture	JJ	119½	3 15 4	—
Gt. Western Rly. 5% Debenture	JJ	130	3 16 11	—
Gt. Western Rly. 5% Rent Charge	FA	129½	3 17 3	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	126	3 19 4	—
Gt. Western Rly. 5% Preference	MA	112	4 9 3	—
Southern Rly. 4% Debenture	JJ	109	3 13 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	109½	3 13 1	3 9 4
Southern Rly. 5% Guaranteed	MA	126	3 19 4	—
Southern Rly. 5% Preference	MA	112	4 9 3	—

*Not available to Trustees over par.
†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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ESTABLISHED 1857. PUBLISHED WEEKLY.

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